IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 24180 of 2004

Between:

1 Ch.B.N.H.Sundaramma, D/o. Seshagiri Rao,

aged about 51 years, Senior Assistant,
O/o Director of Health Services, A.P.Hyderabad.

2 G.Venkata Ramana S/o.G.K.V.Prasad,

aged about 39 years, Senior Assistant,
O/o Director of Health Services, A.P.Hyderabad.

3 P.Prasanna Kumari D/o.P.P.Sameul,

aged about 55 years, Senior Assistant,
O/o Director of Health Services, A.P.Hyderabad.

4 K.Buchanna S/o.Yellaiah

aged about 47 years, Senior Assistant,
O/o Director of Health Services, A.P.Hyderabad.

5 G.Kanya Kumari D/o.Suryanarayana

aged about 52 years, Senior Assistant,
O/o Director of Health Services, A.P.Hyderabad.

6 B.Venkata Ramana S/o.B.V.R.Sastry

aged about 50 years, Senior Assistant,
O/o Director of Health Services, A.P.Hyderabad.

..... PETITIONERS

AND

1 The Principal Secretary to the Government, Health, Medical and

Family Welfare Dept.,Secretariat, Hyderabad.
2 The Director of Health Services A.P. Koti, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in not considering the case of the petitioners for giving exemption for possessing Graduate qualification/G.E.T. (DS) examination as was done in similarly situated persons and set aside the A.P.Administrative Tribunal orders in O.A.No.6592/2004 dt.8.12.2004 as illegal, arbitrary, discriminatory, contrary to the rules and violation of Constitutional provisions and consequent sought a direction to the respondents to consider the cases of the petitioners for giving exemption for possessing Graduate qualification/G.E.(DS) examination as was done in similarly situated persons by disposing the latest representation of the petitioners dt.14.2.2004 keeping in view the orders passed in G.O.Rt.No.1760 HM&FW dt.19.11.1998, G.IO.Rt.No.1262 HM&FW Dt.14.10.2000 and Govt. Memo No.11800/SU.I/2001-3 GAD Dt.5.6.2003.

Counsel for petitioners : Mr.C.Sai Reddy

Counsel for respondents : Government Pleader for Services-I

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ORDER: (per Hon'ble Mr.Justice G.Bikshapathy)

The Writ Petition is filed assailing the order passed by the Tribunal in O.A.No.6592/2004 dated 8-12-2004.

The petitioners are working as Senior Assistants in the Office of the Director of Health Services, Andhra Pradesh, Hyderabad. They filed the O.A. aggrieved by the non-consideration of their application by the 1st respondent seeking relaxation of the Rules issued in G.O.Ms.No.265, Health, Medical and Family Welfare Department, dated 26-5-1994 which require that a candidate for the post of Lay Secretary & Treasurer Gr.II/Administrative Officer/Superintendent, should possess Degree qualification. It is also stated that the 1st respondent relaxed the Rules in respect of other individuals

belonging to the Indian Medicine & Homoeopathy Department in the years 1998, 2000 and 2003. Aggrieved by the said non-relaxation of the Rules by the 1st respondent, the petitioners filed O.A.No.6592/2004 and the Tribunal by the order dated 8-12-2004 while dismissing the said O.A. observed as follows :

> "The relaxation being sought for by the Applicants can only be given in terms of Rule 31 of A.P. State and Subordinate Service Rules by the Government of Andhra Pradesh. The cases cited by the Applicants as precedents in G.O.Rt.No.1760, Health, Medical & Family Welfare Department, dated 19-11-1998 as well as G.O.Rt.No.1262, Health, Medica, & Family Welfare Department, dated 14-10-2000 and Memo No.11800/SU.I/2001-3, General Administration (SUI.I) Department, dated 5-6-2003 appear to have been issued without reference to the extraordinary powers of the Government under Rule 31 of A.P. State & Subordinate Service Rules. None of these orders indicate that appropriate procedure has been followed by the Government while issuing the said Orders. I do not consider these as appropriate precedents. Further the powers vested in the Governor under Rule 31 of A.P. State and Subordinate Service Rules are extraordinary powers which can only be used at the discretion of the said authority. It is not for this Tribunal or for that matter any Court to direct the authority to exercise the power in a particular manner. Since the grievance of the Applicant cannot be redressed by way of any direction from this Tribunal, it would not also be appropriate to pass any orders in this O.A. except to state that since the Applicants have filed a representation, the authorities will consider the same strictly in accordance with Rules and make necessary decision thereon. The O.A. is accordingly dismissed with the above observations at the admission stage."

The learned Counsel for the petitioners submits that the petitioners sought suitable direction to the 1st respondent to consider their cases for exemption from possessing the Graduation qualification/G.E.T.

(DS) for further promotion to the post of Superintendents as was given in G.O.Rt.No.1760, Health, Medical & Family Welfare Department, dated 19-11-1998 and G.O.Rt.No.1180-0/SUI/2001-3, GAD, dated 5-6-2003, but the Tribunal did not give any such direction. Hence, the Writ Petition.

We are afraid, we cannot accede to the contention of the learned Counsel for the petitioners. Inasmuch as the Tribunal directed the authorities to consider the representation of the petitioners in accordance with the Rules, the same cannot be said to be suffering from any infirmity. The Writ Petition is devoid of any merit and the same is accordingly dismissed. No order as to costs.

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Justice G.Bikshapathy

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Justice P.S.Narayana

Date : 30-12-2004

AM

ASSISTANT REGISTRAR

To

1 The Principal Secretary to the Government, Health, Medical and Family Welfare Dept.,Secretariat, Hyderabad.

2 The Director of Health Services A.P. Koti, Hyderabad.

3. 2 C.Cs. to the Government Pleader for Services-I, High Court of A.P., Hyderabad (OUT)

4. 2 C.D. copies